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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

No. 99-42104 JD
Adv. No. 00-4106-AJ

SUZANNE FINN-HARGRAVE,

Debtor. /

LOIS I. BRADY, trustee of the
bankruptcy estate of Suzanne
Finn-Hargrave, Debtor,

Plaintiff,

vs.

THOMAS B. HARGRAVE; AURUM
CAPITAL MANAGEMENT CORP.,

Defendants. /

MEMORANDUM DECISION

Lois I. Brady, trustee in bankruptcy (the "trustee"), has moved for summary judgment under Fed.R.Bankr.P. 7056 in this adversary proceeding, by which she seeks to establish that certain assets were community property of the debtor and defendant Thomas B. Hargrave ("Hargrave") at the date of the debtor's bankruptcy petition herein, and thus, are part of the debtor's bankruptcy estate pursuant to

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2 Bankruptcy Code § 541(a)(2)¹. The motion will be denied.

3 The facts are undisputed. The debtor and Hargrave married
4 in 1990. In 1998, Hargrave filed an action in California
5 Superior Court to annul the marriage. On March 12, 1999, while
6 the annulment action was pending, the debtor filed a chapter 13
7 petition herein. Thereafter, the court converted the case to
8 chapter 7.

9 Following the conversion, the court granted a motion by
10 Hargrave for relief from the automatic stay provided by
11 Bankruptcy Code § 362(a) to continue his prosecution of the
12 superior court annulment action. On July 31, 2000 the superior
13

14 ¹Bankruptcy Code § 541(a)(2) provides:

15 (a) The commencement of a case under section 301, 302, or 303
16 of this title creates an estate. Such estate is comprised of
17 all the following property, wherever located and by whomever
held:

18 . . .

19 (2) All interests of the debtor and the debtor's spouse
20 in community property as of the commencement of the case that
is—

21 (A) under the sole, equal, or joint management and
22 control of the debtor; or

23 (B) liable for an allowable claim against the debtor, or
24 for both an allowable claim against the debtor and an
25 allowable claim against the debtor's spouse, to the extent
that such that such interest is so liable.

1 court issued its Memorandum of Decision holding that Hargrave was
2 entitled to a

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6 judgment of nullity, based upon the debtor's fraud².

7 The trustee contends that the property at issue herein must
8 be treated as community property, and thus, property of the
9 estate, notwithstanding the annulment. The trustee argues that
10 as a matter of both California state law and federal bankruptcy
11 law, the annulment cannot "relate back" to an earlier date if
12 relation back would prejudice the rights of innocent third
13 parties, and that the trustee is an innocent third party whose
14 rights would be prejudiced by relation back. Therefore, argues
15 the trustee, the court must look at the status of the marriage as
16 it existed on the petition date. Because the annulment followed
17 the filing of the petition, the trustee contends that it is
18 simply irrelevant.

19 Hargrave disagrees, and argues that the fact that the
20 annulment decree followed, rather than preceded, the bankruptcy
21

22 ²The superior court found that prior to the marriage, the
23 debtor "had already been stealing huge sums" from Hargrave and
24 his partners, and that "her intention to continue the thefts,
25 and to make the thefts easier to cover up, was a substantial
26 reason why she married [Hargrave]". The court also commented,
"It would be hard to find a more outrageous case than this
one".

1 filing does not prevent the annulment from relating back to the
2 date of marriage, thereby precluding the creation of any
3 community property. Rather, Hargrave contends, the parties'
4 property rights are governed by Cal. Family Code § 2251, which
5 provides that in the case of annulment of a marriage that one or
6 both of the parties believed to be valid, the parties are deemed
7 to be "putative spouses" and any property that would have been
8 community property had the marriage been valid (called "quasi-
9 marital property") is to be divided between them as if it were,
10 in fact, community property³. Cal. Family Code § 2252 (West 1994)
11 goes on to provide:

12 The property divided pursuant to Section 2251 is liable
13 for debts of the parties to the same extent as if the
14 property had been community property or quasi-community
15 property.

16 ³Cal. Family Code § 2251 (West 1994) provides:

17 (a) If a determination is made that a marriage is void or
18 voidable and the court finds that either party or both parties
19 believed in good faith that the marriage was valid, the court
20 shall:

21 (1) Declare the party or parties to have the status of a
22 putative spouse.

23 (2) If the division of property is in issue, divide, in
24 accordance with Division 7 (commencing with Section 2500),
25 that property acquired during the union which would have been
26 community property or quasi-community property if the union
27 had not been void or voidable. This property is known as
28 "quasimarital property".

29 (b) If the court expressly reserves jurisdiction, it may make
30 the property division at a time after the judgment.

1 Hargrave concedes that if he and the debtor are ultimately found
2 to be putative spouses under Cal. Family Code § 2251, then their
3 quasi-marital property would be included in the estate. (This
4 issue has not yet been determined.)

5 The court agrees with Hargrave. It is clear that property
6 rights are created and governed by applicable state law. Butner
7 v. U.S., 440 U.S. 48, 99 S.Ct. 914 (1979); In re Farmers Market,
8 Inc, 792 F.2d 1400, 1402 (9th Cir. 1986). Thus, the issue of
9 whether the debtor had an interest in the assets at issue that
10 would bring them into the estate is governed by California law.
11 Butner, 440 U.S. at 55; In re Mantle, 153 F.3d 1082, 1084 (9th
12 Cir. 1998). Given the annulment, the determination will
13 ultimately turn on whether the debtor and Hargrave were "putative
14 spouses" under Cal. Family Code
15 § 2251, and if so, what property would have been community
16 property had the marriage not been annulled.

17 Relying heavily on the Ninth Circuit's decision in Mantle,
18 the trustee argues that the debtor was married at the date of the
19 petition, thereby vesting the community property in the estate by
20 operation of Bankruptcy Code § 541(a)(2), and that the superior
21 court's subsequent annulment decree cannot change the community
22 nature of the property at the petition date.

23 The court rejects this argument. In Mantle, a couple had
24 sold a community property residence prior to bankruptcy but after
25 the debtor spouse had filed for divorce. The Ninth Circuit held
26 that the sales proceeds, which were on hand at the date of the

1 petition, were community property for purposes of Bankruptcy Code
2 § 541(a)(2). The decision, however, was not grounded on any
3 supposed principle of federal bankruptcy law under which decrees
4 affecting property, entered after the filing, are irrelevant and
5 cannot adversely affect the trustee's claim of title. (Indeed,
6 title disputes between the trustee and third parties are often
7 resolved after bankruptcy.) Rather, Mantle was grounded on
8 the court's construction of California law, under which the event
9 that terminates the liability of community property for community
10 debts is not entry of a decree dissolving the marriage, but the
11 division of the community property. Id. at 1085. Thus, Mantle
12 merely held that issuance of the post-petition dissolution decree
13 was not an event that was relevant under California law to the
14 issue of whether the proceeds were community property.

15 Moreover, under California law, the consequences of an
16 annulment are quite different than those of a divorce, thus
17 distinguishing the present case from the numerous additional
18 divorce cases that the trustee cited, e.g., In re Willard, 15
19 B.R. 898 (9th Cir. BAP 1981)⁴. As the California Supreme Court
20 explained in Sefton v. Sefton, 45 Cal.2d 872, 874 (1955):

21 It has been said that an annulment decree has the effect
22 of declaring a marriage void ab initio. A divorce in
23 this state merely dissolves the existing marriage,
leaving intact the marriage relationship between the

24
25 ⁴The present case is distinguishable from Willard for the
26 additional reason that here, the annulment proceeding went
forward only after this court lifted the automatic stay.

1 time of the marriage ceremony and the entry of the final
2 decree. An annulment, on the other hand, has been said
3 to "relate back" and erase the marriage and all its
implications from the outset.

4 It is true, as the Sefton court noted, that the relation
5 back doctrine is essentially a fiction, and not absolute. Id. at
6 875. As the court stated:

7 [I]n cases involving the rights of third parties, courts
8 have been especially wary, lest the logical appeal of
9 the fiction should obscure fundamental problems and lead
10 to unjust or ill-advised results respecting a third
11 party's rights. Thus, the exceptions to the theory of
12 "relation back" should have their typical application to
situations affecting an innocent third party.

13 Id. The court found further support for its view that the
14 relation back doctrine is not absolute from former Cal. Civ. Code
15 § 86, since reenacted as Cal. Civ. Code § 2212(b) (West 1994),
16 which provides:

17 A judgment of nullity of marriage is conclusive only as
18 to the parties to the proceeding and those claiming
19 under them.

20 Because relation back is not absolute, California courts
21 have declined to apply the doctrine when to do so would harm
22 innocent children of a void or voidable marriage, see Sefton, 45
23 Cal.2d at 876 (internal citation omitted). Courts have also
24 declined to apply relation back when to do so would retroactively
25 reinstate alimony from a prior marriage, Sefton, 45 Cal.2d at
26 876-77, or create a liability for the issuer of an insurance

1 policy, Interinsurance Exch. of Auto. Club of So. Cal. v. Velji,
2 44 Cal.App.3d 310, 118 Cal.Rptr. 596 (1975), or for the
3 California Real Estate Recovery Fund, Powers v. Fox, 96
4 Cal.App.3d 440, 158 Cal.Rptr. 92 (1979), or for the U.S. Social
5 Security Administration, Purganan v. Schweiker, 665 F.2d 269 (9th
6 Cir. 1982), when no liability otherwise existed. Thus, the
7 "California rule [is] that annulment should relate back only when
8 it promotes sound policy." Purganan, 665 F.2d at 271.

9 Unlike the present case, the foregoing cases involved
10 situations where application of the relation back doctrine would
11 have created a claim against a third party in favor of one of the
12 parties to the annulment proceeding, under circumstances where no
13 general policy would have been served by creation of the claim.
14 Here, however, it is the failure to apply relation back that
15 would create the claim, the claim would be in favor of, not
16 against, the third party (i.e., the trustee), and the claim so
17 created would be at the expense of a defrauded innocent party.
18 The foregoing cases therefore have no application here.

19 Here, to permit the debtor's creditors, and perhaps the
20 debtor herself⁵, to profit from the debtor's fraudulent scheme at
21 the expense of an innocent victim, Hargrave, would not promote
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24 ⁵If any creditors holding debts that are nondischargeable
25 under Bankruptcy Code § 523(a) filed claims, then the debtor
26 would receive a direct benefit by payment of those claims out
of the estate. The record here does not show whether any such
claims exist.

1 any "sound policy" of either California or federal bankruptcy
2 law. Thus, relation back is not barred by California law.

3 Moreover, the trustee's title, if any, derives solely from
4 the debtor's title or interest, because the trustee is the
5 debtor's successor in interest to her community property rights,
6 if any. Bankruptcy Code § 541(a)(2). Thus, the trustee "claims
7 under" the debtor for purposes of Cal. Family Code § 2212(b), and
8 can have no better interest than the debtor in Hargrave's assets.

9 The trustee's final argument is that under Bankruptcy Code
10 § 544(a)(1), she enjoys the rights of a judicial lien creditor
11 under state law as of the date of the petition, and that her
12 resulting claim to the community property prevails over
13 Hargrave's conflicting claim. This argument fails because it
14 assumes, incorrectly, that the property was, in fact, community
15 property at the petition date (community property being subject
16 to levy as a matter of California state law). In the case of an
17 annulment, however, the rights of a levying creditor under
18 California law turn on whether the property levied on was quasi-
19 marital property under Cal. Family Code § 2251, and thus
20 available to creditors under Cal. Family Code § 2252. This
21 issue, as mentioned, has not yet been decided.

22 The cases cited by the trustee are not to the contrary.
23 Sampsell v. Staub, 194 F.2d 228 (9th Cir. 1951) involved a
24 creditor levy on property that was the subject of a subsequently
25 recorded declaration of homestead. In Lezine v. Sec. Pac.
26 Financial Servs., 14 Cal.4th 56, 58 Cal.Rptr.2d 76 (1996), the

1 court upheld the validity of a creditor levy on community
2 property before the property had been divided between the
3 spouses, even though the levying creditor had previously held an
4 invalid consensual lien on the same property. None of these
5 cases dealt with an annulment, and none held that a levying
6 creditor of one party to an annulled marriage can somehow obtain
7 rights in property owned by the other party without regard to
8 Cal. Family Code §§ 2251 and 2252.

9 For the foregoing reasons, the court will issue its order
10 denying the trustee's motion for summary judgment. The court
11 expresses no opinion as to whether the debtor and Hargrave were
12 putative spouses under Cal. Family Code § 2251, a determination
13 that is best left to the state court⁶.
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15 Date: August 22, 2000
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18 _____
Edward D. Jellen
19 United States Bankruptcy Judge
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21 _____
22 ⁶The parties may disagree as to whether this court's Order
23 Granting Motion for Relief from the Automatic Stay, filed
24 September 2, 1999, lifted the automatic stay to permit the
25 state court to determine whether the debtor and Hargrave were
26 putative spouses, and if so, which property became "quasi-
marital property" under Cal. Family Code § 2251. To clear up
any ambiguity, the court is willing to entertain a motion to
modify the order to permit the state court to decide the
putative spouse issue.

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